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Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

October Term 1994

Leslie E. Knighten, Petitioner

Versus

Cave And McKay, Attorneys At Law, Et Al., Donald G. Cave, John F. McKay, Craig S. Watson, Unknown Corporation and\or Corporations and Unknown Indemnity Company, Respondents

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ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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69 pp

QUESTIONS PRESENTED

I.

Whether attorneys are given total immunity from claims seeking redress for alleged violations of civil rights pursuant to Title 42 U.S.C.

II.

Whether imposing Rule 11 Sanctions against Petitioner, as a consequence of filing Title 42 claims against attorneys and\or law firms, was an abuse of discretion.

III.

Whether Title 42 United States Code Section 1981, excludes whites.

IV.

In a civil case, can ineffective or inadequate legal representation by an attorney and\or law firm violate the requirements of the due process clause or violate any other constitutional guarantees.

QUESTIONS PRESENTED CONTINUED

V.

Whether Petitioner's legal malpractice claim seeking redress was prescribed, pursuant to a one year prescription period under LSA-C.C. 3492 or subject to a ten year prescription period under LSA-C.C. 3499.

VI.

Whether the Petitioner's constitutional right to a fair and impartial trial was violated.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1994

Leslie E. Knighten, Petitioner

Versus

Cave And McKay, Attorneys At Law, Et Al., Donald G. Cave, John F. McKay, Craig S. Watson, Unknown Corporation and\or Corporations and Unknown Indemnity Company, Respondents

---

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Leslie E. Knighten, respectfully prays that a writ of certiorari will be issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit in favor of the aforesaid Respondents and against the Petitioner entered on July 29, 1994.

OPINIONS BELOW

The unpublished written opinion of the Fifth Circuit Court of Appeals appears in Appendix B. The unpublished written opinion of the District Court of the Middle District of Louisiana appears in Appendix C.

JURISDICTION

The Court of Appeals' Judgment and Opinion was filed on July 29, 1994, and set forth in Appendix A and Appendix B. This Court's jurisdiction in invoked under Title 28 U.S.C. §1254 (1) and Title 28 U.S.C. §2101 (c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I to the United States Constitution is set forth in Appendix L

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STATEMENT OF THE CASE

A. Proceedings Below

On November 20, 1991 the Petitioner filed the original Title 42 Complaint against Respondents (R.1-25);

On December 11, 1991 the Respondents filed an Answer to complaint (R.33-36);

On or about March 3, a Scheduling Order (R.54) was entered and in said Order Petitioner was given until March 27, 1992 to propound his written discovery request and to amend his complaint.

On or bout March 23, 1992 Petitioner filed a motion for additional time to amend complaint and to propound written discovery (R.55-57);

On or about March 24, 1992 an Order (R.62) was entered denying Petitioner's motion for additional time to amend complaint and to propound written discovery request;

On March 27, 1992 the Petitioner filed his timely Motion For Leave To Amend Complaint, Amended Complaint (R.64-65,67-95) and propound numerous discovery request upon the Respondents, and each of them;

On March 31, 1992 an Order (R.66) was entered granting the Petitioner's Motion For Leave To Amend Complaint and Amended Complaint;

On May 15, 1992 Respondents filed a Motion For Summary Judgment and\or Motion to Dismiss (R.347-353) and filed a Motion for Sanctions (R.123-128);

On May 26, 1992 Petitioner filed a Motion For Continuance (R.133-135) in respect to Respondents Motion For Summary Judgment and\or Motion to Dismiss (R.347-353) and a Motion for Sanctions (R.123-128);

On May 26, 1992 an Order (R.136) was entered granting the Petitioner's Motion For Continuance;

On June 15, 1992 Petitioner filed a Motion For Continuance (R.137-143) in order to propound discovery prior to the hearing of Respondents's Motion For Summary Judgment and\or Motion to Dismiss (R.347-353);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent, John F. McKay, to answer first set of interrogatories (R.144-154);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent, Craig S. Watson, to answer first set of interrogatories (R.158-171);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent, Craig S. Watson, to answer second set of interrogatories (R.175-196);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent, Cave & McKay, to answer first set of interrogatories (R.200-210);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent Cave & McKay, to answer second set of interrogatories (R.214-223);

On June 18, 1992 an Order (R.227) was entered referring Petitioner's motions to compel defendants to answer interrogatories, to a U. S. Magistrate;

On June 18, 1992 an Order (R.228) was entered denying Petitioner's Motion For Continuance (R.137-143) to propound discovery prior to hearing Respondent's Motion For Summary Judgment and\or Motion to Dismiss (R.347-353);

On June 18, 1992 Petitioner filed his Opposition To Respondent's Motion For Summary Judgment And\Or a Motion To Dismiss Plaintiff's Complaint (R.229-247);

On June 18, 1992 Petitioner filed his Opposition To Respondent's Motion For Sanctions And Petitioner's Counterclaim For

Sanctions (R.248-254);

On June 23, 1992 a Ruling (R.287-291) was entered granting Respondent's Motions For Summary Judgment and Motion for Sanctions;

On June 26, 1992 an Order (R.292) was entered granting Respondent's Motions For Summary Judgment and Motion for Sanctions;

On July 7, 1992 Petitioner filed a Motion For Reconsideration of Order Of Summary Judgment And\Or Ruling On Motions, Alternatively, A Motion For A New Trial And\Or Similar Motion (R.293-296, 297-308);

On July 7, 1992 Petitioner filed a Motion For Continuance (R.319-321) in respect to the motions to compel Respondents to answer interrogatories, pending an appeal;

On July 8, 1992 an Order (R.322) was entered granting the Petitioner's Motion For Continuance;

On July 8, 1992 Respondents filed their

second Motion For Sanctions (R.323-325);

On July 13, 1992 an Order (R.328) was entered reassigning Petitioner's Motion For Reconsideration of Order Of Summary Judgment And\Or Ruling On Motions, Alternatively, A Motion For A New Trial And\Or Similar Motion (R.293-308) from December 18, 1992 to August 21,1992;

On August 20, 1992 Petitioner filed his Opposition To Respondent's Motion For Sanctions And Plaintiff's Counterclaim For Sanctions (R.329-333);

On August 20, 1992 a Ruling (R.334-335) was entered denying Petitioner's Motion For Reconsideration of Order Of Summary Judgment And\Or Ruling On Motions, Alternatively, A Motion For A New Trial And\Or Similar Motion (R.293-308) and denying Respondent's Motion For Sanctions (R.329-333);

On September 1, 1992 an Amended Judgment (R.336) was entered in respect to the

sanctions;

On September 16, Petitioner filed an Application To Stay Execution of Judgment Pending Appeal (R.337-340);

On September 17, Petitioner filed a timely Notice Of Appeal (R.341-343) appealing from the Ruling entered on or about August 21, 1991 (R.334-335) and from Amended Judgment entered on September 1, 1992 (R.336);

On September 21, 1992 an Order (R.346) was entered granting Petitioner's Application To Stay Execution Of Judgment pending appeal effective under Rule 62(d), Upon the posting of an approved supersedeas bond in the amount of $1,500.00;

On July 29, 1994 a Judgment and Opinion was entered in favor of the Respondents by the United States Court of Appeal For The Fifth Circuit, that has brought on this matter before this Court.

B. Statement of the facts

On or about March 30, 1985 the Petitioner received a job related injury while working as an electrician in the Sears building for Todd Electric, Inc., a sub-contractor, for Rentenbach Engineering which in turn had been hired by Sears Roebuck Company to renovate it's Cortana Store in Baton Rouge, Louisiana.

On or about the 10th day of July, 1985, a Petition for Damages was filed in the Parish of East Baton Rouge, 19th Judicial District Court, docket no. 290-664, Div. "K", on behalf of your Petitioner seeking redress for certain personal injuries sustained by your Petitioner. Said Petition for Damages was filed by the Respondents Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent Craig S. Watson. Said Petition for Damages sought redress from Todd Electric, Inc., Sears Roebuck Company

and Flor-Line, Inc., for certain personal injuries on behalf of your Petitioner.

In the aforementioned Petition For Damages filed by the Respondents Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent Craig S. Watson, failed to properly demand a trial by jury in compliance with Art. 1733(a) of the Louisiana Code of Civil Procedure.

On or about August 29, 1985 Todd Electric Inc. filed an answer (R.253) to your Petitioner's complaint for damages through their attorney of records. In said answer request a trial by jury and so ordered on

On or about November 4, 1985 Sears Roebuck Company through their counsel of records filed an untimely answer (R.253) to your Petitioner's complaint for damages, which was uncontested by the Respondents.

On or about September 3, 1986, Todd Electric, Inc., filed a motion for summary

judgment (R.253) arguing Petitioner's (Leslie E. Knighten) recovery was limited to workers' compensation, because Todd Electric had not committed an intentional tort against him.

On or about October 22, 1986 the Respondents Cave and McKay, Attorneys At Law through their agent and\or employee, Respondent, Craig S. Watson, filed for the first time interrogatories to Todd Electric, Inc. (R.254) and to Rentenback (R.254). The said interrogatories were filed over 400 days after the filing of your Petitioner's complaint for damages.

On or about October 22, 1986 the Respondents Cave and McKay, Attorneys At Law through their agent and\or employee Respondent Craig S. Watson filed, for the first time, interrogatories to Sears Roebuck Company (R.253) being about 400 days after the filing of your Petitioner's complaint for damages.

The trial court for the 19th Judicial District Court in No. 290-664, Div. "K" set Todd Electric's Motion for Summary Judgment for hearing on October 17, 1986 . Said hearing was continued until November 21, 1986.

The Respondents, Cave and McKay, Attorneys At Law through their agent and\or employee Respondent, Craig S. Watson, failed to file any motions and\or take any defense (R.253-254), in petition form, prior to the hearing of said motion for Summary Judgment, in lite of the fact that interrogatories had been filed and were not answered.

The Respondents, Cave and McKay, Attorneys At Law through their agent and\or employee Respondent, Craig S. Watson, failed to file any motions and\or take any defense (R.253-254), in petition form, prior to the hearing of said motion for Summary Judgment, in respect to subject matter jurisdiction of

the court to be the trier of facts.

On or about November 26, 1986 aforesaid said trial court entered Judgment (R.254) in favor of Todd Electric, Inc. granting the motion for summary judgment dismissing Petitioner's suit with prejudice, but reserved Petitioner's right to proceed against the remaining defendants.

A motion for a New Trial (R.254) was filed on behalf of your Petitioner and came on for hearing on February 20, 1987. The Respondents, Cave and McKay, Attorneys At Law through their agent and\or employee Respondent, Craig S. Watson, failed to file any pleading and\or take any defense (R.253-254), in petition form, in respect to the slightest doubt test and\or similar test governing summary judgments; or the subject matter jurisdiction, in respect to the court being trier of fact; or raise an issue of error in respect to the trial Court entering

summary judgment without discover being propound (R.253-254).

On or about February 25, 1987 said motion for new trial was denied (R.254) by the trial court for the 19th Judicial District Court.

Without any transcript(s) of oral argument, Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee Respondent, Craig S. Watson, appealed (R.254) the ruling of the trial court to the First Circuit Court of Appeals, docket no. CA/87/0643.

The reply brief filed in the First Circuit Court of Appeals, docket no. CA/87/0643 by Todd Electric Inc. was filed untimely, which was uncontested by Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee Respondent, Craig S. Watson.

The decision of the trial court was

affirmed by the First Circuit Court of Appeals on or about the 14th day of January, 1988 (R.106-108). The Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee Respondent, Craig S. Watson, then applied for a Writ of Certiorari and/or Review of the Circuit Court's decision to the Supreme Court of the State of Louisiana in case No. 88-C-0336.

The Writ of Certiorari was denied by the Supreme Court of Louisiana on March 18, 1988.

Subsequent to the ruling by the Supreme Court of Louisiana entered on March 18, 1988, the Respondents Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent, Craig S. Watson, and each of them, elected not to proceed against the remaining defendants in docket no. 290-664, Div. "K".

Approximately 27 days before legal malpractice prescription, being one year, had

expired and on or about February 20, 1989 the Petitioner, by way of Certified Mail, terminated the legal services of the Respondents, Cave and McKay, Attorneys At Law.

On or about March 9, 1989 the Petitioner filed a Petition For Damages seeking redress (R.110-121) against Respondents, Cave And McKay, Attorneys At Law, et al.; Respondent, Donald G. Cave; Respondent, John F. McKay; Respondent, Craig S. Watson And Unknown Indemnity Company, docket number 340-980, division "M" in the 19th Judicial District Court, State Of Louisiana, Parish Of East Baton Rouge.

The aforementioned Respondents responded to Petitioner's Petition For Damages seeking redress, being a legal malpractice claim, with an Exception in the form of a Motion For Prematurity (R.241-242) and pleaded in said motion, that Petitioner's legal malpractice

complaint was premature because Sears Roebuck Company and Flor-Line, Inc. were still Defendants in the above styled Leslie Knighten Vs. Todd Electric, Inc., Sears Roebuck Company, and Flor-Line, Inc. docket number 290-664, division "K" filed in the 19th Judicial District Court, State Of Louisiana, Parish Of East Baton Rouge.

On or about July 6, 1989 a Contract Of Employment was signed between Petitioner, Leslie E. Knighten and Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent, Craig S. Watson, and each of them, and stipulated therein, by and through Respondent's agent, in said Contract Of Employment that "no unnecessary or unreasonable delays will occur in the prosecution of the above case." (R.270).

The Respondents were rehired to litigate with Sears Roebuck Company, the remaining

defendants and in the Petitioner's Worker's Compensation Claim against Todd Electric, Inc..

Subsequent, to the rehiring of the respondents, a Motion And Order For Voluntary Dismissal (R.244), being joint in nature, was entered "without prejudice" in the case styled Leslie E. Knighten Versus Cave And McKay, Attorneys At Law, et al., Donald G. Cave, John F. McKay, Craig S. Watson, et al., docket number 340-980, division "M" in the 19th Judicial District Court, State Of Louisiana, Parish Of East Baton Rouge.

On or about October 18, 1989 the Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent, Craig S. Watson and each of them filed a request To Enroll As Counsel in the case styled Leslie Knighten Vs. Todd Electric, Inc., Sears Roebuck Company, and Flor-Line, Inc. docket number

290-664, division "K" filed in the 19th Judicial District Court, State Of Louisiana, Parish Of East Baton Rouge.

Subsequent to the signing of the Contract Of Employment signed on or about July 6, 1989 between Petitioner, Leslie E. Knighten and Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent Craig S. Watson and each of them, there has been three (3) depositions taken of the employees of Sears Roebuck Company and prior to the aforesaid depositions there were no depositions taken of the Sear's employees by the Respondents since the filing of the complaint filed on or about July 10, 1985.

Since the date of singing of the aforementioned Contract Of Employment, the Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent, Craig S. Watson and

each of them, elected not to proceed against the remaining defendants in docket no. 290-664, Div. "K".

On numerous occasions the Petitioner requested, in letter form, that the Respondents furnish the Petitioner, Leslie Knighten, with a status report and information concerning his case, which was denied by the Respondents. The Petitioner was forced by action of the Respondents to make a demand (R.273-274), in letter form, in respect to a status report and information that was in the custody and control of the Respondents, this demand (R.273-274) was also denied by the Respondents and each of them.

By the actions or inactions of the Respondents, and each of them, the Petitioner's case was abandon. In addition the Respondents refused to furnish the Petitioner information concerning the status of his case and other information concerning

his case that was in the custody and control of the Respondents.

On or about November 20, 1991, as the consequence of the aforementioned, a Title 42 U.S.C. §1981 and\or §1983 and\or §1985 Complaint for damages seeking redress was filed by the Petitioner and against the Respondents, and each of them, in Federal Court for the Middle District of Louisiana, the jurisdiction was invoked under Title 28 U.S.C. §1331 and\or §1332 and\or §1343.

In this pending litigation, unlike the Exception of prematurity filed earlier, the Respondent have taken the defence this time that prescription has run, therefore alleged Petitioners' case is time bared and further alleged they are not subject to a Title 42 claim seeking redress for alleged violation of Petitioner's constitutional rights.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for one or any combination of the following reason(s):

I. For any one, or combination of reasons assigned under question I, which is as follows "Whether attorneys are given total immunity from claims seeking redress for alleged violations of civil rights pursuant to Title 42 U.S.C."

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

On or about February 27, 1992 a status conference was held in the Federal Building located in Baton Rouge, Louisiana, in regards to the Petitioners' complaint for damages, filed pursuant to Title 42, against the Respondents seeking redress for alleged violations of Petitioners constitution rights for legal services they performed for the

Petitioner. In said conference the Petitioner was informed by a United States Magistrate Judge, Honorable Stephen C. Riedlinger, that "attorneys have immunity from Title 42 claims" and was reminded of the requirements of Rule 11 regarding his claims brought pursuant to Title 42 §§1981, 1983 and 1985. The Petitioner informed the court that he would amend his complaint to reflect a legal malpractice complaint and a Scheduling Order was entered to reflect the same.[1]

The Petitioner timely amended his complaint to reflect a cause of action of negligence and\or legal malpractice. The District Court and the Court of Appeals ruled that Petitioner reserved his cause of action under Title 42 by pleading that "under any other unidentified statute not listed in the complaint which "enables Plaintiff a cause of

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[1] see Appendix I-1 & I-2

action against Defendants Cave & McKay"."[2]

In respect to Petitioner's Title 42 §1983 claim alleged in Petitioner's original complaint, the district court held the following; "Plaintiff's Sec. 1983 claim must also fall because the defendants are a private law firm and to state a cause of action under Sec. 1983, plaintiff must allege that discrimination resulted by one acting under color of state law. Since no state actor in involved, this claim too must fall."[3]

The Petitioner submits Title 42 §1983 is as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within

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[2] see footnote 6, Appendix B-16 & B-17

[3] see Appendix F-3

> the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. For the purpose of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

the intent of Title 42 §1983 is to provide a remedy at law for deprivation of rights as set out in the aforementioned paragraph and the Petitioner submits that the district court was in error in it's opinion that Petitioner must allege that "discrimination" resulted by one acting under color of state law, pursuant to Title 42 §1983.

In application of Title 42 §1983 in respect to "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" to this case the Petitioner's, but not necessarily limited to, First, Fifth, Seventh and Fourteenth

Amendment right secured by the Constitution are also secured by Title 42 §1983 for redress for the violation of any of Petitioners constitution rights.

In light of the aforementioned if the respondents violated any of the Petitioner's constitutional rights in the prosecution of Petitioner's suit against Todd Electric, Inc. as a consequence of ineffective or inadequate legal representation that resulted in the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws", then the respondents are subject to a suit seeking redress pursuant to a Title 42 §1983 claim, short of total immunity.

In the case at hand, the District Court and the Court of Appeals have ruled that attorneys and law firms have immunity from a complaint seeking redress for alleged violations of civil rights pursuant to Title 42 USC §1983, based upon their opinion that

the Respondents are private individuals and no state action exist, consequently are immune from suit.

To the contrary, the Petitioner submits that state action can be found in private individuals who (1) perform public functions or (2) have a significate state involvement see Marsh v. Alabama, 326 U.S. 501 (1946). Also see Shirley v. State Nat. Bank of Connecticut,[4] C.A. Conn. (1974) 493 F.2nd 739, writ denied, 95 S.Ct. 329 where the following is found, as follows:

> "Within the meaning of this section, a private person may act under color of law."

In application of the first test of Marsh, to this case, the respondents perform public functions in the private practice of law. Therefore, attorneys meets the test the

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[4] Shirley, was briefed and argued in the Court of Appeal, in support of the Petitioner's contentions.

Supreme Court set out in Marsh, short of Respondents enjoying total immunity.

In application of the second test of Marsh, to this case, the Respondents in this matter are attorneys, all of which: (1) have a license to practice law; (2) of all of the Title 42 litigants the Respondents are the only private individuals allowed to publicly practice law which involves a significate state action involving the protection of litigants constitutional rights; (3) Attorneys are the only private individuals required to take an oath, either directly or indirectly, to support the constitution of the United States, before they are allowed to practice law for the public; (4) Attorneys are the only private individuals that are considered to be an "officer of the Court" in their practice of law; (5) Attorneys are the only private individuals where there clients are a third party beneficiary between the

attorney and the State and\or The State Bar Association; (6) Attorneys are the only private individuals required by the constitution to furnish criminal defendants effective counsel; (7) In Louisiana, Attorneys are the only private individuals required to belong to the Louisiana State Bar Association before being allowed to practice law; and (8) Attorneys are the only private individuals that are members of a Bar Association, a state charted corporation (possibly state owned),[5] in order for them to

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[5] LOUISIANA STATE BAR ASSOCIATION: found in Title 37, Chapter 4 Appendix.

The LSBA is really a state chartered corporation; completely runs Louisiana practice of law; comes under same provisions as a nonprofit corporation. The LSBA is self-governing, and no one can practice law in La. unless duly licensed and admitted by LSBA (unless allowed to appear pro hac vice). Louisiana has an integrated bar, meaning can't practice unless member of state bar association.

Louisiana Supreme Court has original jurisdiction over disciplinary proceedings and sole authority to suspend or disbar.

practice law. Therefore, attorneys meets the test the Supreme Court set out in Marsh, short of Respondents enjoying total immunity.

The record is clear, in the opinion of the lower courts, attorneys are given total and absolute immunity from any suit seeking redress for any and all claims of alleged violation of constitutional rights pursuant to Title 42 §1983 or any unidentified section of Title 42.

The District Court and the Court of Appeals concluded that attorneys are in fact and law given immunity pursuant to a Title 42 Claims. However, the Respondents, the District Court and the Court of Appeals have

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"R.S. 37:211. The LSBA is created and regulated under the rule-making power of the Supreme Court of Louisiana, pursuant to a memorial addressed to the court by legislature Act 54 of 1940.

The association may organize under the general corporations laws of this state.

failed to cite any authorities in support of said immunity. The origin of attorneys immunity pursuant to claims seeking redress pursuant to Title 42 claims has yet be defined, unless it has be done by a Act of Congress. This Court has previously held to the contrary, in respect to defence attorneys seeking the same immunity enjoyed by judges and prosecutors, See Tower v. Glover, Or. (1984) 104 S.Ct. 2820, 467 U.S. 914

The Louisiana State Bar Association declined to take any disciplinary actions against the Respondents, for any professional misconduct, in light of the fact that the Respondents refused to inform the Petitioner of the status of his case.

The District Court and the Court of Appeals concluded that attorneys are in fact and law given immunity from any claims filed pursuant to any Title 42 Claims. Consequently, Rule 11 sanctions was imposed

against Petitioner.

What remedial action is appropriate against attorneys in litigation seeking redress for alleged violations of civil rights pursuant to Title 42 U.S.C. and under the authority of the First Amendment allowing "redress". If in fact and law attorneys are given immunity.

If in fact and law attorneys are not given immunity, then Petitioners constitutional rights of due process was violated by not receiving a fair and impartial trial.

II. For any one, or combination of reasons assigned under question number II., which is as follows "Whether imposing Rule 11 Sanctions against Petitioner, as a consequence of filing Title 42 claims against attorneys and\or a law firm, was an abuse of discretion".

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

On or about February 27, 1992 a status conference was held in the Federal Building located in Baton Rouge, Louisiana, in regards to the Petitioners' complaint for damages against the Respondents. In said conference the Petitioner was informed by a United States Magistrate Judge, Honorable Stephen C. Riedlinger, that "attorneys have immunity from Title 42 claims" and was reminded of the requirements of Rule 11 regarding his claims brought pursuant to Title 42 §§1981, 1983 and 1985. A Scheduling Order was entered to reflect the same.[6]

The sanctions were imposed against the Petitioner because in the opinion of the District Court and the Court of Appeals,

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[6] see Appendix I

attorneys are given total and absolute immunity from suits seeking redress for violations of civil rights pursuant to Title 42, in light of the fact that private individuals can constitute an action "under color of state law", see Marsh v. Alabama, 326 U.S. 501 (1946), Tower v. Glover, Or. (1984) 104 S.Ct. 2820, 467 U.S. 914, Shirley v. State Nat. Bank of Connecticut,[7] C.A. Conn. (1974) 493 F.2nd 739, writ denied, 95 S.Ct. 329.

And the Court further concluded; "While the district court is obliged to construe pro se pleadings liberally, it is not required to condone blatantly frivolous, vexatious, or harassing conduct. See Mayfield v. Klevenhagen, 941 F.2d 346, 348 (5th Cir. 1991) ("Although pro se litigants are given considerable latitude, Mayfield has consumed

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[7] Shirley, was briefed and argued in the Court of Appeal, in support of the Petitioner's contentions.

his portion of the court's patience and then some. . . . His wasting of increasingly scarce judicial resources must be brought to an end."). On the contrary, Rule 11 as then in force mandated that such activity be punished regardless of its source, and Congress specifically amended the rule in 1983 to include pro se litigants. See William W. Schwarzer, Sanctions Under the New Rule 11-A Closer Look, 104 F.R.D. 181, 184 (1985). By signing the original pleading, Appellant certified that, after making a "reasonable inquiry," he believed "the matter in his complaint were well-grounded in fact and warranted by existing law." Mayfield, 941 F.2d at 348."*

In application of Mayfield to the case at hand, was the Petitioner civil rights action for redress pursuant to Title 42 "blatantly frivolous," "vexatious", or did

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* see Appendix B-12 & B-13

the Petitioner demonstrate "harassing conduct" to warrant Rule 11 Sanction. The facts of this case will clearly demonstrate this case fails to suffice Mayfield, in respect to justification of the implication of Rule 11 Sanctions.

The Appellant Court allowed Rule 11 sanctions to stand against the Petitioner, as a consequence of "Congress specifically amended the rule in 1983 to include pro se litigants.

By Congress specifically amending the rule in 1983 to include pro se litigants. A reasonable man would conclude, if the Congress of the United States amended Rule 11 to include pro se litigants, one would believe they intended to include attorneys in Title 42 claims seeking redress for violation of alleged civil rights. Therefore, imposing Rule 11 sanctions against Petitioner was in error, in that respect.

The Petitioner submits that he has a constitutional right to have a belief. One of Petitioner's beliefs, is that attorneys are subject to a Title 42 claim for redress. Plaintiff's constitutional right to have a belief and constitutional right to redress, is protected by the First Amendment.

The right to communicate ideas was express in Jamison v. Texas, 318 US 413, 416, 87 Led 869, 872, 63 S.Ct 669, as follows:

> "But one who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the Constitutional right to express his views in an orderly fashion."

in application of Jamison, to the case at hand, the lower court was in error by imposing Rule 11 Sanction on the Petitioner for expressing a belief and seeking redress against the Respondents under the protection of the First, Fifth and Fourteenth Amendments.

Additionally, the record will support that the Petitioner and Respondents both pleaded in the lower court that the Petitioner "believed" that attorneys were subject to a Title 42 claim.

III. For any one, or combination of reasons assigned under reason number III, which is as follows "Whether Title 42 United States Code Section 1981, excludes whites".

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

The summary judgment was entered in favor of the Respondents in respect to Petitioners' Title 42 §1981 based upon the Respondent's pleadings that Petitioner had to be "black" to suffice. The Petitioner contended that he didn't have to be "black" to state a cause of action pursuant to Title

42 §1981. This issue was briefed and argued in the lower Courts and supported by case law in support of Petitioner's contentions.

Additionally, Petitioner contended and briefed that the right to enforce a contract, wasn't the only right defined by Title 42 §1981. There is also the right to sue.....etc.

The lower Courts and Respondents failed to address the case authorities and issues raised by the Petitioner in respect to his contentions, in respect to this issue.

IV. For any one, or combination of reasons assigned under reason number IV., which is as follows "In a civil case, can ineffective or inadequate legal representation by an attorney and\or law firm violate the minimum requirements of the due process clause or violate any other constitutional guarantees.".

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

The Petitioner could cite numerous criminal cases authorities, in respect to the constitutional obligation of attorneys involved in defending criminal defendants and the requirements of due process, in respect to a criminal case.

The Fifth Circuit Court of Appeals has previous ruled in a criminal case if an attorney regardless if appointed or obtained ineffectively defends a criminal defendant and that defendant is convicted as the result of ineffective legal representation, due process has been violated. The Petitioner submits that in this situation, the criminal defendant, if convicted, could get a new trial.

The Petitioner submits that his

constitutional rights of redress, right to a fair and impartial trial, and the constitutional right to a trial by jury can be violated by ineffective legal representation by his attorney, thereby constituting a violation of Petitioner's constitutional rights. Unlike the criminal defendant, the civil litigant cannot get a new trial based upon ineffective legal representation by his attorney.

The Petitioner is unaware of any case law authorities in civil litigation, in respect to violation of any constitutional rights being violated by ineffective legal representation by an attorney. The Petitioner believes that this is a far reaching question and one of the underlying issues, in the case at hand.

In the late seventies or early eighties, this Honorable Court came close in making a similar ruling in a case involving court

appointed attorneys in a child custody case of an imprisoned mother. Some of the Supreme Court Justices submitted that it would open the "flood gates" in respect to court attorneys in application of due process requirements in a civil case. However, the Petitioner submits that due process requires some form of standards on attorneys.

Additionally, the Petitioner respectfully submits, that if there is no constitutional requirements on attorneys involved in civil litigation, there is also no constitutional standards for the practice of law in civil litigation.

If Plaintiff's attorney fails to fully protect his clients constitutional rights or provided ineffective or inadequate legal representation to be effective. Subsequently, looses Plaintiff's case for redress or failed to challenge the court's jurisdiction to be trier of fact in a jury trial case. Did the

attorney violate Petitioner's constitutional right to redress, to sue, the right to a fair and impartial trial or the right to a trial by jury, guaranteed the Petitioner by the First, Fifth, Seventh and Fourteenth Amendments to Constitution of the United States.

V. For any one, or combination of reasons assigned under reason number V., which is as follows "Whether Petitioner's legal malpractice claim seeking redress was prescribed, pursuant to a one year prescription period under LSA-C.C. 3492 or subject to a ten year prescription period under LSA-C.C. 3499;"

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

First and foremost, the Petitioner

respectfully submits that some of the facts stated in the opinion of the Court of Appeals found in Appendix B, copied as if copied word for word and figure, is incorrect and inconsistent with the facts and record of the case, in the following prospective;

(1) in Appendix B-4, the following is found:

> "On June 6, 1989, however, Appellant voluntarily dismissed that suit and immediately rehired the firm to continue his suit against Sears."

in respect to the incorrectness and inconsistency of the facts as cited in above-mentioned paragraph. The Petitioner submits the following; The contract of employment is dated June 12, 1989 by Respondent, Craig S. Watson, and the Motion and Order for voluntary Dismissal[9] is signed by Judge Joseph F. Keogh, 19Th Judicial District Court, on July 6, 1989, therefore in

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[9] see Appendix K-1 & K-2

light of this fact alone the Court of Appeals was incorrect and inconsistent with the facts in asserting that "Appellant voluntarily dismissed that suit and immediately rehired the firm". The facts and record are to the contrary, the Respondents warranted a specific result in the Contract of Employment and subsequently the suit was dismissed.

In response to "continue his suit against Sears." the Petitioner submits that; on June 6, 1989 the Petitioner and Respondent, Cave & McKay, et al., by and through their agent, Respondent, Craig S. Watson, agreed that Respondents, Cave & McKay, Attorneys at Law, would in fact represent the Petitioner in the pending action against Sears, the remaining defendants and in the workers' compensation case against Todd Electric, Inc., based upon the dismissal of Petitioners' state action for legal malpractice. Consequently, a

Contract of Employment was signed by Respondent, Craig S. Watson and the Petitioner, Leslie E. Knighten. In said Contract of Employment it was stipulated by the Respondents that "If the claim is only for workmen's compensation benefits, the fee will be 20% of the first $5,000.00 of recovery and 10% of all amounts recovered of that, as fixed by law." This stipulation was in reference to the fees regarding the handling of Petitioner's Workers' compensation claim against Todd Electric, Inc.. Therefore, the Petitioner submits that the Court of Appeals was incorrect and inconsistent with the facts in asserting that Petitioner rehired the firm to continue his suit against Sears, Petitioner rehired the Respondents to represent him in the Workers' compensation litigation against Todd Electric, Inc., as well as against Sears and the remaining defendants. At least that was, in fact, the agreement between the Petitioner

and Respondents.

Additionally, the Petitioner requested that it be stipulated in writing on said Contract of Employment by the Respondents that no delays would accrue in Petitioners' pending state actions. Respondent, Craig S. Watson, stipulated by hand writing on said Contract of Employment that "No unnecessary & unreasonable delays will occur in the prosecution of the above case."

The Petitioner submits that the Respondents were very clever in shielding their true intentions in respect to their drafting of the Motion And Order For Voluntary Dismissal[10] "Without Prejudice" and very clever in shielding their true intentions in respect to the future legal representation they were going to provide the Petitioner after dismissal of Petitioner's complaint for damages.

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[10] see Appendix K-1 & K-2

The Petitioner submits that the Motion And Order For Voluntary Dismissal (R.224) filed on or about June 6, 1989 states the following "NOW INTO COURT, through undersign counsel, comes plaintiff, Leslie E. Knighten, and defendants, Cave & McKay,". Therefore, it is a joint motion between the Petitioner and Respondents, and there were concessions made to the Appellant by the Appellees or he would not have agreed to dismiss his complaint even "without prejudice" which allows, as a matter of law, a new suite to be brought on the same cause of action.

The district court dismissed the claims of legal malpractice as being time barred. Louisiana generally applies a one-year prescriptive period to claims of legal malpractice. Lima v. Schmidt, 595 So.2d 624, 628 (La. 1992); LA. CIV. CODE ANN. art. 3492 (West 1992). The Court recognizes two exceptions to this general rule:

(1) where the attorneys expressly warrants a specific result and fails to obtain that result, See Lima, 595 So.2d at 628 n.2.. In application of this exception to this case the Respondents stipulated by their agent, Respondent, Craig S. Watson, by hand writing on the Contract of Employment that "No unnecessary & unreasonable delays will occur in the prosecution of the above case." Subsequently, the Petitioners' timely state action for legal malpractice was jointly dismissed based upon a "specific result" as stipulated on said Contract of Employment that "No unnecessary & unreasonable delays will occur in the prosecution of the above case." The record is clear, unnecessary and unreasonable delays did occur in the prosecution of Petitioners case. Therefore, Petitioner's claims of legal malpractice wasn't time barred and was in error for the district court to dismiss this case as being time barred.

and (2) where the attorneys agrees to perform certain work and does nothing whatsoever, See Lima, 595 So.2d at 628 n.2. In application of this exception to this case, the Petitioner submits that the amount of work preformed by the Respondents on Petitioner case constitutes no work, taking into consideration the amount of time the Respondent had Petitioner's case in their custody and control to preform work.

In Respondents Brief at page 8 the following is found, "there have been three (3) depositions taken of the employees of Sears Roebuck Company.". The Petitioner agrees, however all of these depositions were taken on December 8, 1989 commencing at 10:05 a.m., and ending at 12:15 p.m., the deposition were taken at Sears Roebuck Company approximately five miles from the office of the Respondents. All of the witnesses had been employed there since 1985,

and it took over four years for the Appellees to depose them and then only after Petitioner had filed his complaint for damages. Respondents deposed the witnesses about six months after Petitioner complaint was dismissed and approximately six months before July 6, 1990 the date the Respondents allege prescription expired. On or about January 18, 1991 the Petitioner was deposed by Sears Roebuck Company and Todd Electric, Inc., at the Respondent's law firm located in Baton Rouge, Louisiana and Respondent, agent, Craig S. Watson represented the Petitioner in this deposition. Consequently, the Petitioner had no way of knowing that the Respondents's were remaining silent and allowing the silent running of prescription. The Respondents action is in conflict with the following Louisiana authority found in

Jackson v. Zito, App. 1975, 314 So.2d 401, writ denied 320 So.2d 551, 553:

district court.

The Petitioner further submits that the running of prescription commenced after January 18, 1991 and Petitioner's original complaint was filed on or about November 20, 1991 well within prescription.

Additionally, Petitioner pleaded in lower court the application of Lima, to his case, under LSA-C.C. 3499, where prescription is governed by a ten year prescription period as the result of being a third party beneficiary of, a contract to practice law, between the Respondents and each of them, and the Louisiana Bar Association and\or the state of Louisiana. This theory is in respect to professional conduct and\or standard to practice law in respect to attorneys professional responsibilities to his client. This issue wasn't addressed by the Court.

VI. For any one, or combination of reasons assigned under question VI., which is as follows "Whether the Petitioner's constitutional right to a fair and impartial trial was violated"

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

For one, or any combination of reasons set forth in this writ, a writ of certiorari should be issued to review the judgment and opinion of the Court of Appeals for the Fifth Circuit in this matter to enforce Petitioner's constitutional right to a fair and impartial trial and\or hearing.

Additionally, the Petitioner submits that the Courts was fundamentally unfair in their ruling, one example is by disregarding Petitioner's numerous claims for sanctions in respect to the Respondent's untruthful

pleadings.

The Petitioner has requested this Honorable Court for an extension of time in which to file his writ, which was denied.

The Petitioner has been unable to completely address his contentions, submitted for consideration within this writ. The Petitioner respectfully request that his future rights, if any, to fully address his questions be reserved.

CONCLUSION

The Petitioner was informed by a United States Magistrate Judge, Honorable Stephen C. Riedlinger, in a status conference that "attorneys have immunity from Title 42 claims" and was reminded of the requirements

of Rule 11 regarding his claims brought pursuant to Title 42 §§1981, 1983 and 1985. The Petitioner was intimidated by the threat of sanctions, consequently amended his complaint, and was forced litigate his beliefs and rights at a very a minimum.

The Petitioner submits to this Honorable Court and for the record, that the Magistrate Judge conducted the status conference in a very professional manner, in that he spoke in a soft tone, he was mild mannered and seemed to be an exceptionally pleasant individual. In no way was the Petitioner ever intimidated by the treatment of the Magistrate.

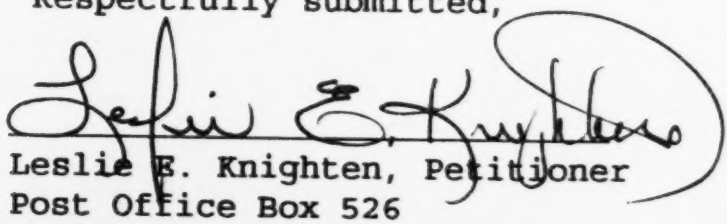
However, from the onset, the Petitioner was at an unconstitutional disadvantaged position for fear of sanctions being imposed for filing the Title 42 claim against Respondents seeking redress for alleged violation of his constitutional rights. Consequently, Petitioners right to litigate

his beliefs were suppressed and Petitioner couldn't freely litigate his contentions as he would have without the fear of sanctions being imposed, which may or may not be reversed on an appeal, to the Court of Appeals.

For one, or any combination of reasons set forth in this petition, a writ of certiorari should be issued to review the judgment and opinion of the Court of Appeals for the Fifth Circuit in this matter.

THIS, the 26th day of October, 1994.

Respectfully submitted,



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